IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1240 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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BHANVARLAL CHAMPALAL KANUNGA - Applicant(s)
Versus
DESAI SURESHKUMAR SHANTILAL SHAH & 5 - Respondent(s)

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Appearance :
MR MAHESH R THAKER for Applicant(s) : 1,
MR M.R.MENGDEY, A.P.P. for Respondent No.6.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/07/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for an appropriate order quashing and

setting aside the order passed by the learned Additional Sessions Judge, Mehsana dated 11.01.2007 in Criminal Revision Application No. 111 of 2005 confirming the order passed by the learned Chief Judicial Magistrate, Mehsana dated 14.12.2005 passed in Inquiry Case No.23 of 2005 with respect to Muddamal – Scorpio Car, by which possession of the Muddamal – Scorpio Car has not been handed over to the petitioner.

2. The petitioner is the complainant who has filed the complaint being C.R.No. 27 of 2005 before the Unjha Police Station for the offence punishable under Sections 384, 386, 507 read with Section 120B of the Indian Penal Code against respondent Nos. 1 to 4 herein. It appears from the record that during the course of the investigation currency notes as well as Muddamal-Scorpio Car were recovered and the petitioner – original complainant submitted an application for handing over of Muddamal of currency notes of Rs.4,60,000/- as well as Scorpio Car.

3. Learned Chief Judicial Magistrate by his judgment dated 14.12.2005 passed an order handing

over of the Muddamal– currency notes of Rs.4,60,000/- to the applicant. However, considering the fact that there is no evidence that Scorpio Car is purchased by the accused from the ransom amount, the learned Chief Judicial Magistrate did not grant the prayer of the petitioner to hand over the Muddamal Scorpio Car. Being aggrieved and dissatisfied with the order passed by the learned Chief Judicial Magistrate, Mehsana dated 14.12.2005 in not handing over possession of the Muddamal Scorpio Car, the petitioner preferred Criminal Revision Application No. 111 of 2005 before the learned Additional Sessions Judge, Mehsana and the learned Additional Sessions Judge, Mehsana, by his impugned order dated 11.01.2007 dismissed the said Revision Application confirming the order passed by the learned Chief Judicial Magistrate, Mehsana. Being aggrieved and dissatisfied with the same, present Special Criminal Application has been filed under Article 226 and 227 of the Constitution of India.

4. Shri Thaker, learned Advocate appearing on behalf of the applicant has vehemently submitted that when the accused himself has not adduced any evidence

that he has not purchased Scorpio Car out of the ransom amount and/or that he has miserably failed to prove that he has purchased the Scorpio Car out of the agricultural income, both the Courts below have materially erred in rejecting the application of the petitioner for handing over the possession of the Muddamal Scorpio Car. Therefore, it is requested to allow the present application.

5. It is required to be noted that both the Courts below have specifically come to the conclusion and have held that there is no evidence to prove at this stage that Scorpio Car is purchased out of the ransom amount and/or the amount by which Scorpio Car is purchased was that of the complainant. When there is no evidence to prove that Scorpio Car is purchased out of the ransom amount as alleged by the complainant, it cannot be said that both the Courts below have committed any error in rejecting the application of the petitioner for handing over the possession of the Muddamal Scorpio Car, which requires interference of this Court in exercise of powers under Article 227 of the Constitution of India. There are concurrent findings of fact given

by both the Courts below. There is no substance in the present application, the same requires to be dismissed and accordingly it is dismissed.

[M.R.Shah, J.]

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